

European Group on Tort Law (歐洲侵權行為法原則)

European Group on Tort Law Principles of European Tort Law

TITLE I. Basic Norm

Chapter 1. Basic Norm

Art. 1:101. Basic norm

(1) A person to whom damage to another is legally attributed is liable to compensate that damage.

(2) Damage may be attributed in particular to the person

a) whose conduct constituting fault has caused it; or

b) whose abnormally dangerous activity has caused it; or

c) whose auxiliary has caused it within the scope of his functions.

TITLE II. General Conditions of Liability

Chapter 2. Damage

Art. 2:101. Recoverable damage

Damage requires material or immaterial harm to a legally protected interest.

Art. 2:102. Protected interests

(1) The scope of protection of an interest depends on its nature; the higher its value, the precision of its definition and its obviousness, the more extensive is its protection.

(2) Life, bodily or mental integrity, human dignity and liberty enjoy the most extensive protection.

(3) Extensive protection is granted to property rights, including those in intangible property.

(4) Protection of pure economic interests or contractual relationships may be more limited in scope. In such cases, due regard must be had especially to the proximity between the actor and the endangered person, or to the fact that the actor is aware of the fact that he will cause damage even though his interests are necessarily valued lower than those of the victim.

European Group on Tort Law 歐洲侵權行為法原則

第 1 篇 基本規範

第 1 章 基本規範

第 1 : 101 條 基本規範

(1) 給他人造成的損害由法律上被歸責者負賠償該損害之責任。

(2) 損害特別可以被歸責於以下人：

a) 其構成過錯的行為引起損害者；或

b) 從事異常危險活動的行為引起損害者；或

c) 其輔助者在其職責範圍內引起損害者。

第 2 篇 一般責任要件

第 2 章 損害

第 2 : 101 條 可回復的損害

損害需為對受保護的法律上利益的物質上或非物質上的侵害。

第 2 : 102 條 受保護的利益

(1) 受保護利益的範圍取決於該利益的性質；利益價值越高，定義越精確並越顯而易見，受到保護範圍就越廣泛。

(2) 生命、身體或精神上的完整性，人的尊嚴和自由享受最廣泛的保護。

(3) 廣泛的財產權保護，包括那些無體資產。

(4) 純經濟利益或者契約關係的保護範圍可能受到更多的限制。在這種情況下，即使行為人的利益必然被評價為比受害人低，但仍然應當注意到行為人與遭受危險者的特別接近關係，或者行為人知道其行為將造成損害的特別的事實。

(5) The scope of protection may also be affected by the nature of liability, so that an interest may receive more extensive protection against intentional harm than in other cases.

(6) In determining the scope of protection, the interests of the actor, especially in liberty of action and in exercising his rights, as well as public interests also have to be taken into consideration.

Art. 2:103. Legitimacy of damage

Losses relating to activities or sources which are regarded as illegitimate cannot be recovered.

Art. 2:104. Preventive expenses

Expenses incurred to prevent threatened damage amount to recoverable damage in so far as reasonably incurred.

Art. 2:105. Proof of damage

Damage must be proved according to normal procedural standards. The court may estimate the extent of damage where proof of the exact amount would be too difficult or too costly.

Chapter 3. Causation

Section 1. *Conditio sine qua non* and qualifications

Art. 3:101. *Conditio sine qua non*

An activity or conduct (hereafter: activity) is a cause of the victim's damage if, in the absence of the activity, the damage would not have occurred.

Art. 3:102. Concurrent causes

In case of multiple activities, where each of them alone would have caused the damage at the same time, each activity is regarded as a cause of the victim's damage.

Art. 3:103. Alternative causes

(1) In case of multiple activities, where each of them alone would have been sufficient to cause the damage, but it remains uncertain which one in fact caused it, each activity is regarded as a cause to the extent corresponding to the likelihood that it may have caused the victim's damage.

(5) 保護範圍也可受責任性質的影響，所以，對利益的保護在故意的加害的情況下要比在其他情況更廣泛。

(6) 當確定保護範圍時，還應考慮行為人的利益，特別是在行動的自由與權利的行使方面的利益，以及公共利益。

第 2：103 條 損害的合法性

損失涉及的活動或來源被認定為違法的不能得到回復。

第 2：104 條 預防性費用

為預防可能發生的損害的威脅而發生的費用，只要是合理引起的就可以計入可回復的損害。

第 2：105 條 損害的證明

損害必須是被依照正規的訴訟程式標準證明的。在證明損害的精確數額過於困難或費用過高時，法院可以評估損害的範圍。

第 3 章 因果關係

第 1 節 必要條件與限定性條件

第 3：101 條 必要條件

如果某活動或行為（以下稱：活動）不存在，則損害就不會發生，那麼該行為就是受害人損害的原因。

第 3：102 條 競合的原因

如果存在多個活動，它們中每一個單獨地都可以同時引起損害，則每個活動都可被認定為受害人損害的原因。

第 3：103 條 可選擇的原因

(1) 在存在多個活動，它們各自單獨地都足以引起損害，但不能確定事實上是哪一個引起了損害時，可根據每個活動引起受害人損害的相應範圍的可能性認定其為受害人損害的原因。

(2) If, in case of multiple victims, it remains uncertain whether a particular victim's damage has been caused by an activity, while it is likely that it did not cause the damage of all victims, the activity is regarded as a cause of the damage suffered by all victims in proportion to the likelihood that it may have caused the damage of a particular victim.

Art. 3:104. Potential causes

(1) If an activity has definitely and irreversibly led the victim to suffer damage, a subsequent activity which alone would have caused the same damage is to be disregarded.

(2) A subsequent activity is nevertheless taken into consideration if it has led to additional or aggravated damage.

(3) If the first activity has caused continuing damage and the subsequent activity later on also would have caused it, both activities are regarded as a cause of that continuing damage from that time on.

Art. 3:105. Uncertain partial causation

In the case of multiple activities, when it is certain that none of them has caused the entire damage or any determinable part thereof, those that are likely to have [minimally] contributed to the damage are presumed to have caused equal shares thereof.

Art. 3:106. Uncertain causes within the victim's sphere

The victim has to bear his loss to the extent corresponding to the likelihood that it may have been caused by an activity, occurrence or other circumstance within his own sphere.

Section 2. Scope of Liability

Art. 3:201. Scope of Liability

Where an activity is a cause within the meaning of Section 1 of this Chapter, whether and to what extent damage may be attributed to a person depends on factors such as

a) the foreseeability of the damage to a reasonable person at the time of the activity, taking into account in particular the closeness in time or space between the damaging activity and its consequence, or the magnitude of the damage in relation to the normal consequences of such an activity;

b) the nature and the value of the protected interest (Article 2:102);

(2) 在有多數受害人，但不能清楚確定特定受害人的損害是否由某一活動引起時，即使該活動可能沒有引起所有損害，也應根據該活動引起特定受害人的損害的可能性，認定其為所有受害人所遭受損害的原因。

第 3：104 條 潛在的原因

(1) 如果某一活動明確地且不可避免地致使受害人遭受損害時，其後發生的另一活動即使可單獨引起同樣的損害，也不予以考慮。

(2) 如果隨後發生的另一活動導致額外損害或加重損害，則仍必須加以考慮。

(3) 如果第一個活動造成持續的損害，隨後發生的另一活動也可能造成此損害，則從那個時間開始，這兩個活動都被視為引起持續損害的原因。

第 3：105 條 不確定部分的因果關係

在有多個活動，能夠確定其中沒有一個活動引起全部損害或任何可確定部分的損害的情況下，則那些（至少）可能引起損害的活動應被推定為引起了相同比例的損害。

第 3：106 條 受害人領域內的不確定原因

受害人必須負擔與由受害人領域內的活動、事件或其他情況引起的損害的可能性相對應的損失。

第 2 節 責任範圍

第 3：201 條 責任範圍

當某活動構成本章第 1 節規定的原因時，損害是否可以以及在何種程度上能夠被歸責於某人，取決於下列因素：

a) 合理人在活動時對該損害的預見能力，特別要考慮加害活動與其結果在時間或空間上的接近性，或者與這種活動導致的通常結果相比較，該損害的嚴重性；

b) 受保護利益的性質和價值（第 2：102 條）；

- c) the basis of liability (Article 1:101);
- d) the extent of the ordinary risks of life; and
- e) the protective purpose of the rule that has been violated.

TITLE III. Bases of Liability

Chapter 4. Liability based on fault

Section 1. Conditions of liability based on fault

Art. 4:101. Fault

A person is liable on the basis of fault for intentional or negligent violation of the required standard of conduct.

Art. 4:102. Required standard of conduct

(1) The required standard of conduct is that of the reasonable person in the circumstances, and depends, in particular, on the nature and value of the protected interest involved, the dangerousness of the activity, the expertise to be expected of a person carrying it on, the foreseeability of the damage, the relationship of proximity or special reliance between those involved, as well as the availability and the costs of precautionary or alternative methods.

(2) The above standard may be adjusted when due to age, mental or physical disability or due to extraordinary circumstances the person cannot be expected to conform to it.

(3) Rules which prescribe or forbid certain conduct have to be considered when establishing the required standard of conduct.

Art. 4:103. Duty to protect others from damage

A duty to act positively to protect others from damage may exist if law so provides, or if the actor creates or controls a dangerous situation, or when there is a special relationship between parties or when the seriousness of the harm on the one side and the ease of avoiding the damage on the other side point towards such a duty.

Section 2. Reversal of the burden of proving fault

Art. 4:201. Reversal of the burden of proving fault in general

(1) The burden of proving fault may be reversed in light of the gravity of the danger presented by the activity.

- c) 責任基礎（第 1：101 條）；
- d) 生活中通常風險的程度；以及
- e) 被違反的原則的保護目的。

第 3 篇 責任的基礎

第 4 章 基於過錯的責任

第 1 節 基於過錯的責任要件

第 4：101 條 過錯

任何人基於過錯因故意或過失違反必需的行為標準都要負責任。

第 4：102 條 必需的行為標準

(1) 必需的行為標準是指合理人在其所處狀況下所應遵守的標準，它特別取決於受保護利益的性質和價值，活動的危險性，行為人被期待的專業知識，損害的可預見性，關係人之間的親近關係或特殊的依賴關係以及預防措施或者其他替代方法的可獲得性及費用。

(2) 以上標準由於年齡、精神上或身體上的能力欠缺，或者由於特殊情況無法期待行為人遵守時，可相應調整。

(3) 當確定必需的行為標準時，應考慮規定或禁止某些行為的規則。

第 4：103 條 保護他人免受損害的義務

積極作為保護他人免受損害的義務存在於下列情況：法律有規定，或者行為人導致或控制危險情況，或者當事人之間存在特殊關係，或者一方面危害的嚴重性，另一方面避免損害的容易性均指向這一義務時。

第 2 節 過錯證明責任的倒置

第 4：201 條 一般的過錯證明責任的倒置

(1) 根據活動導致的危險程度，可將過錯證明的責任倒置。

(2) The gravity of the danger is determined according to the seriousness of possible damage in such cases as well as the likelihood that such damage might actually occur.

Art. 4:202. Enterprise Liability

(1) A person pursuing a lasting enterprise for economic or professional purposes who uses auxiliaries or technical equipment is liable for any harm caused by a defect of such enterprise or of its output unless he proves that he has conformed to the required standard of conduct.

(2) „Defect“ is any deviation from standards that are reasonably to be expected from the enterprise or from its products or services.

Chapter 5. Strict liability

Art. 5:101. Abnormally dangerous activities

(1) A person who carries on an abnormally dangerous activity is strictly liable for damage characteristic to the risk presented by the activity and resulting from it.

(2) An activity is abnormally dangerous if

a) it creates a foreseeable and highly significant risk of damage even when all due care is exercised in its management and

b) it is not a matter of common usage.

(3) A risk of damage may be significant having regard to the seriousness or the likelihood of the damage.

(4) This Article does not apply to an activity which is specifically subjected to strict liability by any other provision of these Principles or any other national law or international convention.

Art. 5:102. Other strict liabilities

(1) National laws can provide for further categories of strict liability for dangerous activities even if the activity is not abnormally dangerous.

(2) Unless national law provides otherwise, additional categories of strict liability can be found by analogy to other sources of comparable risk of damage.

Chapter 6. Liability for others

Art. 6:101. Liability for minors or mentally disabled persons

(2) 該危險程度應當由在那種情況下可能發生的損害的嚴重性以及實際發生的可能性決定。

第 4：202 條 企業責任

(1) 為經營長久的經濟或專業性企業而使用輔助者或技術設備者，應對其企業或其產品的缺陷引起的任何損害負責任，除非他能證明他遵守了必需的行為標準。

(2) “缺陷”是指企業、其產品或其服務偏離人們合理地期待其達到的標準。

第 5 章 嚴格責任

第 5：101 條 異常危險活動

(1) 如某一異常危險活動具有導致損害的特有風險並且實際導致了損害，那麼實施這一活動者應對這種損害負嚴格責任。

(2) 某一特定活動在下列情況即為異常危險活動：

a) 即使已盡實施該活動所有管理上應盡的注意，仍然會引起可預見的和極高的風險；

b) 並非一些通常的做法。

(3) 損害風險的高低視損害的嚴重性和發生的可能性而定。

(4) 本條不得適用於本原則其他條款、國內法或國際條約明確規定了嚴格責任的活動。

第 5：102 條 其他嚴格責任

(1) 國內法可以對更多種類的危險活動規定嚴格責任，即使該活動並非異常危險。

(2) 除非國內法另有規定，可將本規定以類推方式適用於其他同類損害風險，從而增加嚴格責任的種類。

第 6 章 對他人的責任

第 6：101 條 對未成年人或精神障礙者的責任

A person in charge of another who is a minor or subject to mental disability is liable for damage caused by the other unless the person in charge shows that he has conformed to the required standard of conduct in supervision.

Art. 6:102. Liability for auxiliaries

(1) A person is liable for damage caused by his auxiliaries acting within the scope of their functions provided that they violated the required standard of conduct.

(2) An independent contractor is not regarded as an auxiliary for the purposes of this Article.

TITLE IV. Defences

Chapter 7. Defences in general

Art. 7:101. Defences based on justifications

(1) Liability can be excluded if and to the extent that the actor acted legitimately

- a) in defence of his own protected interest against an unlawful attack (self-defence),
- b) under necessity,
- c) because the help of the authorities could not be obtained in time (self-help),
- d) with the consent of the victim, or where the latter has assumed the risk of being harmed, or
- e) by virtue of lawful authority, such as a licence.

(2) Whether liability is excluded depends upon the weight of these justifications on the one hand and the conditions of liability on the other.

(3) In extraordinary cases, liability may instead be reduced.

Art. 7:102. Defences against strict liability

(1) Strict liability can be excluded or reduced if the injury was caused by an unforeseeable and irresistible

- a) force of nature (force majeure), or
- b) conduct of a third party.

(2) Whether strict liability is excluded or reduced, and if so, to what extent, depends upon the weight of the external influence on the one hand and the scope of liability (Article 3:201) on the other.

未成年人或精神障礙者的照管者，對其所照管人引起的損害負責，除非照管者能夠證明他在照管中遵守了必需的行為標準。

第 6：102 條 對輔助者的責任

(1) 任何人都應對其輔助者在職權範圍內違反必需的行為標準造成的損害負責任。

(2) 獨立承攬人不作為本條的輔助者對待。

第 4 篇 抗辯

第 7 章 一般抗辯

第 7：101 條 基於正當化事由的抗辯

(1) 行為人在以下情況下的正當行為可被免責：

- a) 為保衛其自身的受保護利益反對非法攻擊（自衛），
- b) 在不得已的情況下，
- c) 因不能及時獲得公權力機關救濟（自力救助），
- d) 經受害人承諾，或者受害人接受被損害的風險，或者
- e) 根據合法授權，如許可證。

(2) 能否被免責一方面取決於抗辯事由的重要性，另一方面取決於具體責任的條件。

(3) 在特殊情況下，責任可予以減縮。

第 7：102 條 對嚴格責任的抗辯

(1) 如損害是由以下不可預見和不可抗拒的原因引起的，則可減免嚴格責任：

- a) 自然力（不可抗力），或
- b) 第三者行為

(2) 嚴格責任是否可被減免，以及可以減到何種程度，一方面取決於外部的影響的重要性，另一方面取決於責任的範圍（第 3：201 條）。

(3) When reduced according to paragraph (1)(b), strict liability and any liability of the third party are solidary in accordance with Article 9:101 (1)(b).

Chapter 8. Contributory conduct or activity

Art. 8:101. Contributory conduct or activity of the victim

(1) Liability can be excluded or reduced to such extent as is considered just having regard to the victim's contributory fault and to any other matters which would be relevant to establish or reduce liability of the victim if he were the tortfeasor.

(2) Where damages are claimed with respect to the death of a person, his conduct or activity excludes or reduces liability according to para. 1.

(3) The contributory conduct or activity of an auxiliary of the victim excludes or reduces the damages recoverable by the latter according to para. 1.

TITLE V. Multiple Tortfeasors

Chapter 9. Multiple Tortfeasors

Art 9:101 Solidary and several liability: relation between victim and multiple tortfeasors

(1) Liability is solidary where the whole or a distinct part of the damage suffered by the victim is attributable to two or more persons. Liability is solidary where:

a) a person knowingly participates in or instigates or encourages wrongdoing by others which causes damage to the victim; or

b) one person's independent behaviour or activity causes damage to the victim and the same damage is also attributable to another person.

c) a person is responsible for damage caused by an auxiliary in circumstances where the auxiliary is also liable.

(2) Where persons are subject to solidary liability, the victim may claim full compensation from any one or more of them, provided that the victim may not recover more than the full amount of the damage suffered by him.

(3) 當依據本條(1)款(b)項減縮責任時，嚴格責任與第三者的其他責任依據第9:101條(1)款(b)項為連帶責任。

第8章 有作用的行為或活動

第8:101條 受害人有作用的行為或活動

(1) 在受害人對過錯的作用和如果受害人是侵權人等其他影響確定或者減縮受害人責任的相關範圍內，責任可被免除或減縮。

(2) 損害賠償涉及當事人死亡的，可依據本條(1)款根據該死亡者的行為或活動免除或減縮責任。

(3) 受害人的輔助者對損害的發生發揮作用的行為或活動，依據本條(1)款，得免除或減縮受害人可被回復的賠償金。

第5篇 多個侵權行為人

第9章 多個侵權行為人

第9:101條 連帶和單獨的責任：受害人與多個侵權行為人的關係

(1) 受害人遭受的全部或可明確區分部分損害可以歸因於兩個或兩個以上行為人時，行為人負連帶責任。下列情況下行為人負連帶責任：

a) 有意參與，或教唆、慫恿他人實施不法行為，致使受害人遭受損害者；或

b) 一人獨立的行為或活動引起受害人的損害，而同一損害也可歸因於另一人。

c) 在一個人的輔助者對所引起損害應負責任的情況下，該人對輔助者引起的損害負責任。

(2) 當數人承擔連帶責任時，只要賠償總額不超過受害人所遭受損害，受害人可向其中任何一人或多人請求全部賠償。

(3) Damage is the same damage for the purposes of paragraph (1)(b) above when there is no reasonable basis for attributing only part of it to each of a number of persons liable to the victim. For this purpose it is for the person asserting that the damage is not the same to show that it is not. Where there is such a basis, liability is several, that is to say, each person is liable to the victim only for the part of the damage attributable to him.

Art 9:102 Relation between persons subject to solidary liability

(1) A person subject to solidary liability may recover a contribution from any other person liable to the victim in respect of the same damage. This right is without prejudice to any contract between them determining the allocation of the loss or to any statutory provision or to any right to recover by reason of subrogation [cessio legis] or on the basis of unjust enrichment.

(2) Subject to paragraph (3) of this Article, the amount of the contribution shall be what is considered just in the light of the relative responsibility for the damage of the persons liable, having regard to their respective degrees of fault and to any other matters which are relevant to establish or reduce their liability. A contribution may amount to full indemnification. If it is not possible to determine the relative responsibility of the persons liable they are to be treated as equally responsible.

(3) Where a person is liable for damage done by an auxiliary under Article 9:101 he is to be treated as bearing the entire share of the responsibility attributable to the auxiliary for the purposes of contribution between him and any tortfeasor other than the auxiliary.

(4) The obligation to make contribution is several, that is to say, the person subject to it is liable only for his apportioned share of responsibility for the damage under this Article; but where it is not possible to enforce a judgment for contribution against one person liable his share is to be reallocated among the other persons liable in proportion to their responsibility.

TITLE VI. Remedies

Chapter 10. Damages

Section 1. Damages in general

(3) 在無合理基礎只將損害的一部分歸責於對受害人負責的數人中的每一個人時，損害與上述(1)款(b)項的損害相同。主張該損害與上述損害不同必須證明這種不同。只要有這種合理基礎，責任就是單獨的，即每人只對受害人損害中被歸責於他的相應部分負責。

第 9：102 條 連帶責任人的相互關係

(1) 承擔了連帶責任的人，可以向對受害人的同一損害負責的任何一人追償。這一權利不影響當事人之間決定損失分配的合同，或者任何法律規定，或者因法定代位（法定讓與）或基於不當得利的追償權。

(2) 在遵從本條第(3)款的條件下，該償還額應根據各責任人對損害的相對責任，以及他們各自的過錯程度和其他與確立或減縮其責任有關的事項，公平確定。償還額可以是全額補償。如果不能確定責任人的相對責任份額，就應按照負均等責任處理。

(3) 根據第 9：101 條對輔助者引起的損害承擔責任的人，在他和除他的輔助者之外的其他侵權行為人的責任分配關係上，應當被認為承擔其輔助者的全部責任份額。

(4) 償還債務是分擔的單獨債務，即償還債務人按照本條規定僅對損害中其應承擔的部分負責任；但是，在無法對責任人中的一人執行判決所認定償還義務時，他的分擔部分應在其他責任人之間按他們應負責任的比例進行再分配。

第 6 篇 救濟方式

第 10 章 損害賠償

第 1 節 一般的損害賠償

Art. 10:101. Nature and purpose of damages

Damages are a money payment to compensate the victim, that is to say, to restore him, so far as money can, to the position he would have been in if the wrong complained of had not been committed. Damages also serve the aim of preventing harm.

Art. 10:102. Lump sum or periodical payments

Damages are awarded in a lump sum or as periodical payments as appropriate with particular regard to the interests of the victim.

Art. 10:103. Benefits gained through the damaging event

When determining the amount of damages benefits which the injured party gains through the damaging event are to be taken into account unless this cannot be reconciled with the purpose of the benefit.

Art. 10:104. Restoration in kind

Instead of damages, restoration in kind can be claimed by the injured party as far as it is possible and not too burdensome to the other party.

Section 2. Pecuniary damage**Art. 10:201. Nature and determination of pecuniary damage**

Recoverable pecuniary damage is a diminution of the victim's patrimony caused by the damaging event. Such damage is generally determined as concretely as possible but it may be determined abstractly when appropriate, for example by reference to a market value.

Art. 10:202. Personal injury and death

(1) In the case of personal injury, which includes injury to bodily health and to mental health amounting to a recognised illness, pecuniary damage includes loss of income, impairment of earning capacity (even if unaccompanied by any loss of income) and reasonable expenses, such as the cost of medical care.

(2) In the case of death, persons such as family members whom the deceased maintained or would have maintained if death had not occurred are treated as having suffered recoverable damage to the extent of loss of that support.

第 10 : 101 條 損害賠償的性質和目的

損害賠償是以貨幣方式賠償受害人，即，在貨幣可能的範圍內，使受害人回復到如果傷害未發生的狀態。損害賠償同樣要達到預防損害的目的。

第 10 : 102 條 一次性賠償及定期支付

損害賠償，應當根據受害人的利益，適當選擇一次性支付總額或定期支付。

第 10 : 103 條 通過損害事件受益

在決定損害賠償金額時，必須計入受害方通過損害事件所獲得的利益，除非這種做法與受益的目的不一致。

第 10 : 104 條 恢復原狀

只要可能，並且不會給另一方增加當事人過多的負擔，受害人有權不要求損害賠償而要求恢復原狀。

第 2 節 財產損害**第 10 : 201 條 財產損害的性質與確定**

可回復的財產損害指受害人在損害事件中遭受的財物的減少。這種損害通常應當盡量具體地確定，但在某些適當的情況下也可以抽象地加以確定，例如，參照市場價格。

第 10 : 202 條 人身傷害與死亡

(1) 人身傷害的情況，包括可識別的傷害身體健康和精神健康的所有疾病，財產損害包括收入損失，勞動能力的喪失（即使不伴隨任何收入損失）以及合理的開支，例如醫療上的照料等。

(2) 在死亡的情況下，家庭成員等死者生前撫養或如果死亡未發生將撫養的人，可獲得與其撫養喪失程度相等的賠償。

Art. 10:203. Loss, destruction and damage of things

(1) Where a thing is lost, destroyed or damaged, the basic measure of damages is the value of the thing or the diminution in its value and for this purpose it is irrelevant whether the victim intends to replace or repair the thing. However, if the victim has replaced or repaired it (or will do so), he may recover the higher expenditure thereby incurred if it is reasonable to do so.

(2) Damages may also be awarded for loss of use of the thing, including consequential losses such as loss of business.

Section 3. Non-pecuniary damage**Art. 10:301. Non-pecuniary damage**

(1) Considering the scope of its protection (Article 2:102), the violation of an interest may justify compensation of non-pecuniary damage. This is the case in particular where the victim has suffered personal injury; or injury to human dignity, liberty, or other personality rights. Non-pecuniary damage can also be the subject of compensation for persons having a close relationship with a victim suffering a fatal or very serious non-fatal injury.

(2) In general, in the assessment of such damages, all circumstances of the case, including the gravity, duration and consequences of the grievance, have to be taken into account. The degree of the tortfeasor's fault is to be taken into account only where it significantly contributes to the grievance of the victim.

(3) In cases of personal injury, non-pecuniary damage corresponds to the suffering of the victim and the impairment of his bodily or mental health. In assessing damages (including damages for persons having a close relationship to deceased or seriously injured victims) similar sums should be awarded for objectively similar losses.

Section 4. Reduction of damages**Art. 10:401. Reduction of damages****第 10：203 條 物的喪失、滅失和損壞**

(1) 在物的喪失、滅失或損壞的情況下，損害賠償的基本尺度是該物的價值或其價值的減少，與受害人是否想要替換或修理該物無關。但是，如果受害人已經（或決定）替換或修理該物，只要是合理進行的，他因此而支出的更高費用就可以獲得賠償。

(2) 損害賠償同樣適用於對物的使用的喪失，包括因這種結果而產生的交易上的損失。

第 3 節 非財產損害**第 10：301 條 非財產損害**

(1) 考慮利益的保護範圍（第 2：102 條）時，應當對受侵害利益的非財產損害做出賠償。這尤其適用於受害人遭受人身傷害或人的尊嚴、自由或其他人格權利的侵害的情況。非財產損害賠償同樣可以適用於與遭受致命或嚴重非致命傷害的受害人有親近關係的人。

(2) 在確定這種損害賠償時一般應考慮該案的所有情況，包括該痛苦的嚴重性、持續時間和後果。侵權行為人的過錯程度只有在對造成受害人的痛苦起到了顯著作用時才加以考慮。

(3) 在人身傷害的情況下，非財產損害應與受害人的苦痛及其身體或精神健康損傷相符。在確定損害賠償時（包括因與死亡或受重傷的受害人有親近關係的人的損害賠償），客觀上相似的損失應給予相似的總額。

第 4 節 損害賠償的減縮**第 10：401 條 損害賠償的減縮**

In an exceptional case, if in light of the financial situation of the parties full compensation would be an oppressive burden to the defendant, damages may be reduced. In deciding whether to do so, the basis of liability (Article 1:101), the scope of protection of the interest (Article 2:102) and the magnitude of the damage have to be taken into account in particular.

在例外的情況下，如果根據當事人的經濟狀況，全部賠償將對被告形成難以承受的負擔，損害賠償可以減縮。判斷是否減縮損害賠償，特別要根據責任基礎（第 1：101 條）、該利益的保護範圍（第 2：102 條）和損害的大小。